

1 THE GRAVES FIRM
2 ALLEN GRAVES (SB# 204580)
3 E-mail: allen@gravesfirm.com
4 ELIZABETH SULLIVAN (SB# 212482)
5 E-mail: liz@gravesfirm.com
6 790 E. Colorado Blvd., 9th Floor
7 Pasadena, CA 91101
8 Telephone: (626) 240-0575
9 Facsimile: (626) 737-7013

10 Attorney for Plaintiff
11 Jim Swain

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

14 Jim Swain,

15 Plaintiff,

16 v.

17 Ryder Integrated Logistics, Inc. and
18 DOES 1 through 10, inclusive,

19 Defendants.

CASE NO. 3:10-cv-04192-CRB

**REVISED ~~PROPOSED~~ ORDER AND
JUDGMENT:**

**(1) APPROVING CLASS ACTION
SETTLEMENT; AND**

**(2) APPROVING APPLICATION FOR
PAYMENT OF CLASS
REPRESENTATIVE SERVICE
PAYMENT, ATTORNEY FEES, AND
COSTS**

Hearing Date: November 9, 2012

Time: 10:00 a.m.

Dept: 6

Judge: Hon. Charles R. Breyer

1 This matter was heard by the Court on November 9, 2012 in Department 6 of the
2 above-captioned Court before the Honorable Judge Charles R. Breyer pursuant to the
3 noticed Motion for Final Approval. The Court, having considered the documents filed by
4 the parties in connection with the class action settlement and the oral arguments of
5 counsel, finds as follows:

6
7 1. The Court grants Final Approval of the settlement under the terms set forth
8 in the Joint Stipulation of Settlement and Release previously preliminarily approved by
9 this Court.

10
11 2. The Court finds that this action satisfies the requirements for class action
12 settlement under Rule 23 and further finds that the Settlement Class has been adequately
13 represented by Plaintiff and Class Counsel.

14
15 3. When they negotiated the instant settlement, counsel for both parties were
16 fully informed as to the strengths and weaknesses of their respective cases. The
17 settlement was negotiated at arms-length with the assistance of a well-respected and
18 experienced professional mediator. The settlement was not collusive.

19
20 4. The settlement is fair, adequate, and reasonable in all respects.

21
22 5. The Settlement Administrator Kurtzman Carson Consultants LLC
23 distributed the Notice, Claim Form, and Reminder in the form and manner agreed by the
24 parties and ordered by this Court. This constituted the best notice possible under the
25 circumstances.

26
27 6. There have been no objections to the instant settlement. This supports the
28 conclusion that the settlement is fair, adequate, and reasonable.

1 7. As provided in the Joint Stipulation of Settlement and Release, and except
2 as to such rights as are created by the settlement or this Order, all Settlement Class
3 Members who did not opt out of the Settlement have released all Released Claims against
4 Released Parties as defined in the Joint Stipulation of Settlement and Release.

5
6 8. The Court confirms its appointment of Jim Swain as Class Representative.

7
8 9. The Court confirms its appointment of Allen Graves as Class Counsel.

9
10 10. The Court finds that Class Counsel, having expended efforts to secure for
11 the Class a common fund from which payments will be made for the benefit of the Class,
12 is entitled to a fee. Because the settlement provides for a true common fund, a percentage
13 calculation is an equitable method to apply in this case, and, accordingly, the Court hereby
14 approves the application of Class Counsel, Allen Graves, for the amount of \$375,000.
15 The fee is equivalent to 31% of the common fund established in this case, and the Court
16 finds that 31% is a reasonable percentage under the circumstances. Specifically, the Court
17 notes that a 31% fee awards Class Counsel an amount approximately equal to his hourly
18 billings on this matter with no multiplier.

19
20 11. Using the lodestar method as a cross-check, the Court finds that a multiplier
21 of 1.0 is required to confirm the fee award requested by Class Counsel. The Court finds
22 that such a multiplier is appropriate in light of multiple factors including the fact that the
23 terms of this settlement were favorable to the Class, the difficulty of the litigation, the
24 experience of counsel, the risk borne by counsel, and the delay counsel experienced in
25 payment for services.

26
27 12. The Court finds that Class Counsel Allen Graves' hourly rate of \$580 per
28 hour is reasonable and appropriate in light of counsel's skill and experience.

1 13. The Court finds that Class Counsel Elizabeth Sullivan’s hourly rate of \$450
2 per hour is reasonable and appropriate in light of counsel’s skill and experience.

3
4 14. The Court finds that Class Counsel Allen Graves is entitled to \$69,730.18
5 for litigation costs that he incurred in relation to this matter.

6
7 15. The Court also hereby approves the service payment to the Class
8 Representative Jim Swain in the amount of \$15,000.

9
10 16. This service payment is awarded for the initiation of this action, work
11 performed, and the risks undertaken as set forth in the moving papers.

12
13 17. The Court hereby approves payment of the fees and costs to Kurtzman
14 Carson Consultants LLC, the appointed Settlement Administrator, of up to \$38,600 total
15 for all past services rendered and all services to be rendered following Final Approval to
16 complete its duties in connection with the administration of the settlement.

17
18 18. The Court hereby approves payment of \$5,000 to the California Labor and
19 Workforce Development Agency pursuant to Labor Code §2699 *et seq.*

20
21 19. Any separate appeal from the portion of the Judgment regarding the attorney
22 fees and costs awards or the named Plaintiff’s service payments shall not operate to
23 terminate or cancel the Settlement Agreement or otherwise affect the finality or
24 enforceability of this Order or the Final Judgment entered upon settlement.

1 20. The Court directs that within ten (10) days after the Court issues this Order,
2 Defendant shall deliver the amount of One Million Two Hundred Thousand Dollars
3 (\$1,200,000) to an account designated by the Settlement Administrator, Kurtzman Carson
4 Consultants LLC.

5
6 21. The Court further approves and directs Settlement Administrator Kurtzman
7 Carson Consultants LLC to disburse to those persons and entities set forth below the
8 following sums in the manner set forth hereinafter:

9
10 a. **Attorney Fees:** Within three (3) calendar days of receipt of payment
11 from Defendant, the Settlement Administrator shall wire to The Graves Firm
12 attorney fees in the sum of \$375,000.

13
14 b. **Attorney Costs:** Within three (3) calendar days of receipt of
15 payment from Defendant, the Settlement Administrator shall wire to The Graves
16 Firm reimbursement for costs in the sum of \$69,730.18.

17
18 c. **Service Payment to Named Plaintiff:** Within five (5) calendar days
19 of receipt of payment from Defendant, the Settlement Administrator shall mail to
20 Class Counsel a service payment check in the amount of \$15,000 payable to Class
21 Representative Jim Swain.

22
23 d. **Individual Settlement Amounts:** Within thirty-five (35) calendar
24 days of receipt of payment from Defendant, the Settlement Administrator shall
25 mail to each Class Member who submitted a valid and timely Claim Form a check
26 for that Class Member's Individual Settlement Amount calculated pursuant to the
27 terms set forth in the Joint Stipulation of Settlement and Release previously
28 approved by this Court.

1 e. **LWDA PAG Act Payment:** Within thirty-five (35) calendar days of
2 receipt of payment from Defendant, the Settlement Administrator shall mail to the
3 California Labor and Workforce Development Agency a check in the amount of
4 \$5,000.

5
6 d. **Settlement Administration Fees and Expenses:** After all other
7 distributions described herein have been completed, the Settlement Administrator
8 may pay to itself, Kurtzman Carson Consultants LLC, the amount due for its
9 services in this matter not to exceed \$38,600.

10
11 22. Each check to a Class Member shall be valid for 180 days from the date
12 of issuance. If a check is not cashed within 180 days of issuance, the check shall be
13 cancelled. The amounts from the cancelled checks shall be donated to a charitable
14 organization mutually selected by the parties.

15
16 23. The Court hereby enters Judgment approving the terms of the Settlement.
17 This Order shall constitute a final judgment for purposes of FRCP Rule 58.

18
19 24. The Court retains jurisdiction over the administration and effectuation of the
20 Settlement including, but not limited to, the disbursal to the Claimants, payment of the
21 attorney fees and litigation expenses, the service payment to the Class Representative, the
22 payment to Kurtzman Carson Consultants LLC, the final dismissal of this matter, and
23 other issues related to this Settlement. As part of the Final Accounting, and upon a
24 showing that Defendant has made all payments required by this Order, the parties will
25 jointly move for an order dismissing the Complaint in the Action on the merits and with
26 prejudice, and permanently barring all Settlement Class Members from prosecuting any
27 Released Claims against any of the Released Parties.

1 25. This Court shall conduct a Final Accounting hearing in the above-captioned
2 matter on May 24, 2013 at 10:00 a.m. Class Counsel shall file a
3 Final Accounting Report no later than May 10, 2013.
4

5 **IT IS SO ORDERED**, November 19, 2012.
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

